

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
State of Florida, Department of Management)	FCC File No. 0004362039
Services, Division of Telecommunications)	
)	
Request for Waiver of Section 90.531(b)(1)(iii) of)	
the Commission's Rules)	

ORDER

Adopted: May 27, 2011

Released: May 27, 2011

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. Before us is a request for waiver filed by the State of Florida, Department of Management Services, Division of Telecommunications (Florida).¹ Florida currently is licensed for up to 100 deployable 700 MHz repeaters operating in the conventional, *i.e.*, non-trunked, mode on up to eight interoperability channel sets.² It seeks a waiver of Section 90.531(b)(1)(iii)³ of the Commission's rules to enable it to operate these repeaters in the trunked mode.⁴ We grant Florida's waiver request, subject to conditions, because doing so will not frustrate the Commission's intent in enacting Section 90.531(b)(1)(iii), and because it is in the public interest to do so.

¹ The Division of Telecommunications or DivTel, which was formerly known as the State Technology Office, has oversight of the administration, technical standards and operational policies for the 700 MHz interoperability spectrum within Florida. DivTel serves as co-chair of the Florida Executive Interoperability Technologies Committee (FEITC) with the Florida Division of Emergency Management (FDEM) which is the equivalent of a State Interoperability Executive Committee (SIEC). We note that Florida's initial application for trunked use of 700 MHz interoperability channels was returned by the Licensing Branch because it lacked an approval letter from the Region 9 Regional Planning Committee (RPC). See FCC Reference Letter No. 5043584 (Nov. 5, 2010) citing 47 C.F.R. § 90.531(b)(1)(iii). As stated in a subsequent letter from the RPC, the application should not have been returned because Florida, as an SIEC-equivalent, had not delegated approval of interoperability applications to the RPC. See Letter to Michael J. Wilhelm, Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau, from Ray Carlson, Chairperson, Florida Region 9, Regional Planning Committee (dated Nov. 8, 2010) (Region 9 Letter).

² See FCC File No. 0004362037 (filed Aug. 23, 2010 amended Dec. 27, 2010) (WQNL307).

³ 47 C.F.R. § 90.531(b)(1)(iii).

⁴ See FCC File No. 0004362039 (filed Aug. 23, 2010 amended Dec. 27, 2010) - Letter to Michael J. Wilhelm, Deputy Chief, Policy Division, Public Safety and Homeland Security Bureau, from Charles Ghini, Director, Division of Telecommunications (dated Nov. 8, 2010) (Waiver Request).

II. BACKGROUND

2. In the *Fourth Report and Order*⁵ in WT Docket 96-86, the Commission allowed secondary trunking of interoperability channels but imposed limits on the number of interoperability channels that could be used as part of fixed infrastructure:

Based on the record in this proceeding, we believe that jurisdictions are more likely to implement interoperability capability in their trunked infrastructure if they could use some of the Interoperability channels pairs as part of their general use trunked systems during the majority of the time when the channels are not needed for interoperability purposes. Further, we agree with the NCC^[6] that to obtain the benefits here we need only to allow trunking on a few of the Interoperability channels. The majority of Interoperability channels should remain available for the most likely interoperability communications scenario, conventional communications on a unit-to-unit basis. Therefore, we will allow trunking on a limited number of Interoperability channels. To ensure that these Interoperability channels are always available when necessary for conventional interoperability operations, we will allow trunking only on a secondary basis as recommended by the NCC. Further, as recommended by the NCC, we will put a limit on the number of Interoperability channels that can be used in a trunked system.⁷

3. The Commission imposed a limit on the number of interoperability channels that may be used in a trunked system, *inter alia*, out of the NCC's concern that a licensee could acquire such a large number of interoperability channels in a trunked system that the channels would "become so integral to the jurisdiction's [general use] trunked system that it could become 'politically impossible' to release them for interoperability communication."⁸ To prevent the jurisdiction from holding the interoperability channels "hostage," the NCC recommended limits on the number of interoperability channels that could be trunked at any one location.⁹ The Commission adopted a modified version of that recommendation in Section 90.531(b)(1)(iii) of the Commission's rules which limits licensees to two trunked interoperability channels per ten general use channels.¹⁰

4. Here, however, there is no possibility of the requested interoperability channels being held "hostage" as part of a larger general use trunked system – the interoperability channels will be used in "stand alone" deployable repeaters unassociated with general use fixed infrastructure. Moreover, we are not concerned about the interoperability channels being promptly "de-trunked" when necessary to

⁵ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010, WT Docket 96-86, *Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, 16 FCC Rcd 2020 (2001) (*Fourth Report and Order*); *Memorandum Opinion and Order*, 17 FCC Rcd 17202 (2002).

⁶ The National Coordinating Committee (NCC) was a Federal Advisory Committee chartered to provide the Commission with recommendations on the optimum use of the 700 MHz public safety spectrum that became available as a consequence of the digital television transition.

⁷ *Fourth Report and Order*, 17 FCC Rcd at 2036 ¶ 42.

⁸ *Id.* 2034 at ¶ 37.

⁹ *Id.*

¹⁰ 47 C.F.R. § 90.531(b)(1)(iii).

allow conventional operation, because the deployable repeater will be under the control of the first responders at an incident scene who readily can revert the repeater to conventional operation.

III. DISCUSSION

5. To obtain a waiver, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹¹

6. We conclude, for the reasons stated above, that grant of the requested waiver will not frustrate the intent of Section 90.531(b)(1)(iii) of the Commission's rules. We also find that the public interest will be served by grant of the waiver because the deployable repeaters operated in the trunked mode, will provide greater spectrum efficiency – and hence enhanced communications capability – at incident scenes. Consequently, subject to the conditions specified below, we grant Florida a waiver of Section 90.531(b)(1)(iii) that limits the number of narrowband interoperability channels that may be trunked.¹²

7. In June 2008, the Bureau sought comment on the National Public Safety Telecommunications Council's (NPSTC) proposal to designate the narrowband reserve channels "to promote deployment of mobile trunked infrastructure that can be transported into [an] incident area."¹³ Most commenting parties supported the NPSTC proposal, although two commenting parties raised questions regarding interference and the licensing of these channels.¹⁴ Although the Commission has not issued a notice of proposed rule making in response to the NPSTC proposal, we condition the instant waiver grant on the disposition of the NPSTC petition.

8. Specifically, should the Commission authorize mobile trunked infrastructure using narrowband reserve channels, this waiver shall expire and the deployable repeaters authorized by this waiver must be reprogrammed to operate on narrowband reserve channels. Florida must bear the cost of reprogramming its repeaters and shall not be eligible for reimbursement of any costs associated with modifying its repeaters in order to migrate to the narrowband reserve channels and comply with the technical and licensing rules applicable to those channels.

9. Furthermore, operations pursuant to this waiver are secondary, *i.e.*, the repeaters (a) must not cause interference to, and must accept interference from, any fixed base station, and its associated mobiles, operating on the narrowband interoperability channels, and (b) must not cause interference to, and must accept interference from, any mobile or portable unit operating in the "direct," *i.e.*, unit-to-unit mode.

¹¹ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹² In order to facilitate interoperability, we require that the deployable repeater systems authorized by this waiver be "open," *i.e.*, they shall not require a system key. In addition, Florida must advise all potential authorized users of the repeaters of the frequencies and other parameters of the deployable repeaters.

¹³ See Petition for Rulemaking of the National Public Safety Telecommunications Council at 7, RM-11433 (filed Feb. 8, 2008). Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking of the National Public Safety Telecommunications Council Concerning the 700 MHz Public Safety Narrowband Channels, RM-11433, *Public Notice*, 23 FCC Rcd 395 (PSHSB 2008).

¹⁴ See Comments of Motorola, Inc., RM-11433 at 3 (filed July 16, 2008); Comments of the Commonwealth of Virginia, RM-11433 at 3 (filed July 16, 2008).

IV. ORDERING CLAUSES

10. ACCORDINGLY, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the waiver request filed by the State of Florida, Department of Management Services, Division of Telecommunications IS GRANTED to the extent discussed herein and SUBJECT TO THE CONDITIONS in Paragraphs 6, 8 and 9 *supra*.

11. IT IS FURTHER ORDERED, that the Application, FCC File No. 0004362039, SHALL BE PROCESSED.

12. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief - Policy and Licensing Division
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